

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57420; File No. SR-Phlx-2008-16)

March 3, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Dividend, Merger, and Short Stock Interest Strategies Fee Cap Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2008, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend for a period of one year, until March 1, 2009, the pilot programs for: (1) the \$1,000 and \$25,000 fee caps on equity option transaction and comparison

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

charges on dividend,<sup>5</sup> merger,<sup>6</sup> and short stock interest<sup>7</sup> strategies; and (2) the license fee of \$0.05 per contract side imposed on dividend and short stock interest strategies, as described below. The current fee caps and \$0.05 per contract side license fee are in effect as a pilot program that is scheduled to expire on March 1, 2008.<sup>8</sup> Other than extending the pilot program for an additional one-year period until March 1, 2009, no other changes to the Exchange's current dividend, merger and short stock interest strategy program, which includes the \$0.05 per contract side license fee, are being proposed at this time.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.Phlx.com/exchange/phlx-rule-fil.htm>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV

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<sup>5</sup> For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. See, e.g., Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40).

<sup>6</sup> For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See id.

<sup>7</sup> For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See id.

<sup>8</sup> See Securities Exchange Act Release No. 55358 (February 27, 2007), 72 FR 9828 (March 5, 2007) (SR-Phlx-2007-14).

below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on dividend, merger and short stock interest strategies executed on the same trading day in the same options class. Specifically, Registered Options Trader ("ROT") and specialist net equity option transaction and comparison charges are capped at \$1,000 for dividend, merger, and short stock interest strategies executed on the same trading day in the same options class.<sup>9</sup> In addition, there is a \$25,000 per member organization fee cap on equity option transaction and comparison charges incurred in one month for dividend, merger and short stock interest strategies combined. The \$1,000 and \$25,000 fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges occurring as part of a dividend, merger, or short stock interest strategy.<sup>10</sup>

In addition, the Exchange assesses a license fee of \$0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees, if applicable.<sup>11</sup> The applicable license fee is assessed on every transaction and is not subject to the \$1,000 or \$25,000 fee caps described above, nor does it count towards reaching the \$1,000 or \$25,000 fee caps.

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<sup>9</sup> See id.

<sup>10</sup> Currently, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions in connection with trades occurring as part of a dividend, merger or short stock interest strategy.

<sup>11</sup> For a complete list of these product symbols, see the Exchange's \$60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

The purpose of extending the pilot program for the fee caps on equity option transaction and comparison charges on dividend, merger and short stock interest strategies and the \$0.05 per contract fee imposed on dividend and short stock interest strategies until March 1, 2009 is to continue to attract additional liquidity to the Exchange and to remain competitive with other options exchanges in connection with these types of options strategies. In addition, the purpose of extending the pilot is to recoup the license fees owed in connection with the trading of products that carry license fees. Even with the assessment of the \$0.05 license fee per contract side, the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for these types of options strategies.

This proposal is scheduled to continue the fee for trades settling on or after March 1, 2008 and will remain in effect as a pilot program until March 1, 2009.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees, and other charges among Exchange members. The Exchange believes that the proposed extension of the current fee caps is beneficial to its members by providing additional trading opportunities at an efficient cost. Additionally, the proposal allows the Exchange to recoup the license fees owed in connection with the trading of products that carry license fees.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).





